

**CITY OF TAKOMA PARK, MARYLAND
(ADOPTED 10/25/04)**

**CLOSED SESSION, PRESENTATION, INTERVIEWS, REGULAR MEETING &
WORKSESSION OF THE CITY COUNCIL**

Monday, July 26, 2004

Closed Session ~~6/19/04~~ 7/19/04 - Moved by Barry; seconded by Elrich. The Council voted unanimously to convene in Closed Session at 6:42 p.m. in the Conference Room of the Municipal Building. OFFICIALS PRESENT: Porter, Barry, Elrich, Seamens, Williams. The Council discussed a personnel matter (former City Manager Rick Finn's contract), obtained legal advice and discussed pending litigation (the Arredondo lawsuit against the City). (Authority: Annotated Code of Maryland, State Government Article, Section 10-508(a)(1)(ii); 10-508(a)(7); and 10-508(a)(8).)

OFFICIALS PRESENT:

Mayor Porter	City Manager Matthews
Councilmember Austin-Lane	Assistant City Clerk Carpenter
Councilmember Seamens	City Attorney Silber
Councilmember Williams	

The Council convened at 6:40 p.m. in the Council Chambers of the Municipal Building, 7500 Maple Avenue, Takoma Park, Maryland, to establish a quorum and vote to convene in a proposed Closed Session to discuss the Arredondo lawsuit against the City.

CLOSED SESSION

The Council voted in favor of convening in Closed Session with the intention of reconvening in open session at 7:30 p.m.

Closed Session ~~6/26/04~~ 7/26/04 - Moved by Seamens; seconded by Austin-Lane. The Council voted unanimously to convene in Closed Session at 6:40 p.m. in the Municipal Building Conference Room. OFFICIALS PRESENT: Porter, Austin-Lane, Seamens, Williams. The Council discussed the Arredondo lawsuit and an amendment to former City Manager Rick Finn's severance agreement. (Authority: Annotated Code of Maryland, State Government Article, Section 10-508(a)(1)(ii) and 10-508(a)(7).)

RECONVENED IN OPEN SESSION

The Council reconvened in open session at 7:40 p.m. in the Council Chambers.

OFFICIALS PRESENT:

Mayor Porter
Councilmember Austin-Lane
Councilmember Barry
Councilmember Elrich
Councilmember Seamens
Councilmember Williams

City Manager Matthews
Assistant City Clerk Carpenter
City Attorney Silber
Associate Planner Inerfeld
Assistant Planner Blanchard
City Arborist Linkletter
Public Works Director Lott
Deputy Public Works Director Braithwaite
HCD Director Daines

OFFICIAL ABSENT:

Councilmember Mizeur

COUNCIL COMMENTS

Councilmember Barry commented that it was a delightful surprise to see that Becca Lilly Park trash cans have been returned and the “carry in carry out” signs have been removed. The neighbors are very pleased. Our community had argued that it is close enough to the stream to have the same standard applied as the standard at Sligo Creek Park. County Councilmember Tom Perez’ work on this is appreciated.

Councilmember Williams noted that he had enjoyed attending the COG retreat over the past weekend. He brought back information for the Council and the public. The retreat featured speakers on sustainable growth and balance in our communities, including Milwaukee Mayor John Norquist and Bill Hudnut of the Urban Land Institute. The materials from the retreat, including a summary of the 911 Commission report, are available for review in the Administration Office.

Mayor Porter said that she had the honor of being invited to the celebration of the 75th Anniversary of the Takoma Park and Silver Spring Lions Club. The Lions Club International president was in attendance. That evening, a new local charter was granted for the Latino Lions Club. Mayor Porter noted that she read a proclamation at the at the event and submitted it to the Clerk for the record.

Mayoral Proclamation in Honor of the 75th Anniversary of the Takoma Park Lions Club (Attached)

PUBLIC COMMENT PERIOD

Nellie Moxley, of Pinecrest said that input from the public is missing on some Council actions. For example, the smoking law and other issues were voted on without public input. Council should take both sides and look at them before passing a resolution. (Distributed a Family Research Council book., “The Slippery Slope of Same Sex Marriage.”) I stand for Takoma Park not being looked at as only for one people. I’m nervous to stand here because of past injustice.

You are passing things and not listening to the public. I hope that things work out with the new City Manager. Don't be so fast on passing these amendments, but look at both sides.

Susan Solarz, Ward 6 said she just moved here, partly because of some of the things she has seen in Takoma Park. She noted that she has a special interest in walkability and bikability issues.

Councilmember Barry welcomed her to the community.

PRESENTATION

1. Councilmember Williams' Update on the Community Center Construction Project.

Councilmember Williams distributed a seven-page finance update and noted that on the first three pages there were no changes from previous weeks. He said he had been working on getting updated material on expenditures and will post an update to the Web page as soon as it is available. He noted that the price for the precast concrete has changed. On page 5, some of the items that were potential now have numbers starting to come in, including telephone system changes (almost \$20,000), and new skylights in the atrium (\$69,000). The attachments are to show you a bit of the process. He said he was given information on skylights this morning; it changed this afternoon. This is meant to give you a sense of how these numbers come through, and the various places overhead and profit are added in.

He said he would still argue that we should try to find a way to add the skylight. His sense is that this number will not get smaller, but will only get larger as the contractor covers up the area where the skylight is to go. Any pressure on this number will be to make it larger.

The price of the precast elements has increased by over \$3,000 beyond what we discussed a few weeks ago. Mr. Williams said he doesn't know why the unit cost went up. Does that make a difference to Council? It seems to be a small change on the scale of things.

Mayor Porter asked why the linear foot cost had increased. Mr. Williams said it is not clear why.

Mr. Williams provided a third handout on progress meetings, noting that once this is complete, we'll have a good sense of what we've spent. He asked Council for a decision on what they would like to do with the skylight and other questions.

Ms. Porter asked what is the time frame in which a decision must be made.

Mr. Williams said we could potentially be fine until September, noting that at that point layers will start to pile on and increase cost.

Ms. Porter asked about the status of bids for the community level?

Ms. Matthews said the bids would be received in September.

Ms. Porter said we should schedule a Council discussion as soon as possible when we get the bids back on this floor in order to discuss what is outstanding, plus this floor, and the skylights. By then we'll have suggestions from the manager on financing, to discuss at the same time. The skylight would add a great deal.

Mr. Barry asked if we might have a resolution to the issues of cost delays by that time? He noted that it will make it more feasible to make financial decisions once that is resolved.

Ms. Matthews answered that we would have that information in September.

Mr. Williams said that he will continue to attempt to provide constant updates on the big picture and what's been spent.

Ms. Austin-Lane commented that in September, there may be a few more things we want to add, especially if we want to talk about financing.

Mr. Seamens said he is disappointed we didn't talk about Community Center finances during the budget process, but September will be a good time to discuss it at this point.

Ms. Porter noted that we did not have all the information at the time of the budget discussion.

Ms. Austin-Lane commented that she is also disappointed that it was not discussed at budget time. She asked if the precast items were funded at the new cost?

Mr. Williams responded that he thinks of it as a wash, with a potential for going slightly negative.

Mr. Seamens said that since we could not add the precast elements later, it is important that we move forward.

Ms. Porter noted that there is consensus to move forward.

INTERVIEWS

2. Safe Roadways Committee Interviews - Malcolm Logan and Nicole Leboeuf

Malcom Logan was not present. Council interviewed Nicole Leboeuf.

(Mr. Elrich arrived at 8:10.)

REGULAR MEETING

3. Single Reading Ordinance re: Air Conditioning

Ms. Porter noted that passage of this emergency ordinance would postpone enforcement, until January, of the County Code requiring dedicated electrical service for all individual window air-conditioning units. Elizabeth Davison, Director of the Montgomery County Department of Housing and Community Affairs, has sent a letter urging us not to enact this.

Ms. Daines said that while the County shares our concerns about lack of air conditioning, they expressed concern about the long term life safety issues. As we've noted, the county is allowing landlords to continue to operate the units, as long as a landlord provides evidence that they are upgrading the electrical system and can show evidence that the current electrical system is not overtaxed. If the landlord hires an electrician, and all the criteria have been met, they can continue to operate the air conditioner until the electrician has an opportunity to do the work. The staff thinks that this is a sufficient remedy.

Montgomery County has been active in promoting loans to landlords to make the needed upgrades. They note that a sufficient number have upgraded their service. 75% of those we contacted have already made the upgrades. Of the 54% asked (of those cited for violation), 75% have upgraded, or are in the process of upgrading. We are able to identify 31% as units who had the air conditioners pulled, 15% are being restored.

Once the landlord identifies the plan for improvement, they are permitted to reinstall the air conditioner. We've contacted roughly half of those who received citations.

Ms. Porter commented that 10% of the units have had their air conditioning removed, with no plans to reinstall. A couple of these are buildings which are in the process of being sold. There are four or five buildings in this category.

Mr. Seamens asked for how many people/units is there a problem, and how many will be without air conditioning for the rest of the summer?

Ms. Daines replied that in the best of all possible worlds, none of them, if the landlord plans to continue to provide air conditioning. If they show that the electrical service is not overtaxed and show that they have contracted with an electrician to provide the upgrade, then the air conditioner remains.

Mr. Seamens asked how many owners will get an extension, and how many will pull the units out?

Ms. Daines said there are 129 buildings (859 units) that we identified through violation notices. Of those, we contacted the owner or agent for 501 of those units. 407 had window units that were plugged into outlets that were insufficient, 128 of them had their air conditioning units removed. Of that 128, 19 appear to be on a temporary basis. 298 units have been upgraded or plan to upgrade. The improvements vary in scope.

Ms. Porter pointed out that some number in excess of 100 units have had their air conditioners removed where it is not simply a temporary removal.

Ms. Daines said that is correct.

Mr. Elrich commented that for those that did not yet have their air conditioners in, they were not in violation, but yet they were told they cannot put air conditioners in.

Ms. Daines said that yes, the timing of the inspection makes a difference, and whether the property owner keeps units in year-round. We have not identified all violations.

Mr. Seamens said this is not an easy issue; there is concern with both the danger from unsafe electrical issues and from health issues. This ordinance seems reasonable, but maybe we should not go so far into January.

Ms. Porter said we want to see people in units where the electrical service is safe, but we do not want to force air conditioner removal. Our intention was to postpone the removal until the hottest time of year is past. The second step will be to assist with financial issues.

Ms. Porter continued by suggesting that Council should go forward with the emergency ordinance but for a shorter period of time, suggesting 90 days.

Mr. Elrich agreed that it is not a problem if it gets us through October. We have to deal with the other legislation. We have to contact tenants by mail and by hand to educate people about not putting a coin in the fuse box, which could cause a fire. We need to move forward with both.

Ms. Daines noted the County's letter, which mentions the precedent of waiving the national property maintenance code. She said she shares that concern. This ordinance will not change what's already taking place, the 90 day period given by the County.

Mr. Elrich noted that this will not help those who never put in their air conditioners or those who were told by their landlords to remove them.

Ms. Porter said that part of what we will be proposing is that the owners will have to provide a line for an air conditioner in each unit.

Mr. Williams said we don't want this to happen again. We should provide education to landlords and tenants that one dedicated circuit will be required. In addition, let them know they must be careful in the meantime.

Ordinance moved by Elrich; seconded by Williams, with the amendment that it be effective for 90 days.

Elaine Feister, Cheney Drive, said that her landlord has opted to pull the air conditioner. My

landlord told me this on June 21. He has put the property on the market and has no interest in having the electrical work done.

Karen Dalchow, attorney for tenants at 8508-8510 Flower Avenue said that these tenants have been told to pull their air conditioners. The heat has been unbearable. We have meetings there in the building. They have fans on. There are elderly people and pregnant women there. This is a public health threat. Some tenants have had window units for up to 10 years, on these same circuits, but there has never been a fire problem. She urged the Council to allow them to keep the air conditioners. She also urged that the City fine landlords to punish landlords who refuse to follow the City Code.

Sandra Epion, Flower Avenue, said she has lived there for eight years. She testified that they were threatened with a \$200 charge if they didn't take out the air conditioner immediately. They had been charged \$50-\$100 for air conditioner use. She said her apartment is unbearable. They had provided the air conditioner themselves but cannot use it. She live on the top floor. She said her father wanted her to move out of the apartment because of the situation. She thanked Council for listening.

Maria Hunter, 8508 Flower Avenue, Apt. 4A, said she has lived there for 10 years. She said this condition is terrible and that she feels like she's going to die when it is so hot and humid.

Nancy Lopez, 8510 Flower Avenue, said her son is sensitive to heat. He has heat rash and hives. He has to stay at his aunt's house. The landlord has no intention of fixing this problem. The building is for sale. She asked that Council please force them to provide air conditioning.

Wilfredo Soriano, 8510 Flower Avenue, Apt. 5B, said that when he moved into the building, the contract said it had air conditioning. He's had air conditioning for two years now. Since they have moved the air conditioner, he's had difficulties for himself, and his family. He has three children. The children wake up at night with headaches because of the extreme heat and that he has never had this medical difficulty with them. Please help us with this problem. He said his wife is expecting; he doesn't want anything to happen to her. He thanked Council for listening.

Carlos Rubio, 8510 Flower Avenue, Apt. 14B, said he has lived there for eight years and had not been told he couldn't have an air conditioner in his unit. Mr. Rubio said he doesn't have children, but he hears the neighbor's children crying because of the heat. Even adults cannot sleep. He said he hopes that Council will be able to put themselves in his place, and help them. He said he hopes that Council will help the tenants to have air conditioning and to have adequate circuits to support that. He thanked Council for taking the remarks into consideration.

Herminina Angeles, 8510 Flower Avenue, Apt. 5B, said she lives in 5B with her husband. She testified that she feels that she cannot breath and gets dizzy. Her children get no sleep at night. She said she is pregnant, expecting in October. It would be a great help to have the air conditioning. She said she hopes Council will help. Other children in the building suffer. They also have nosebleeds.

Ms. Austin-Lane affirmed that she will support the ordinance. She expressed sympathy with pregnant women. She said there are elderly people and children in her ward, and residents who function better with air conditioning in these hot summer months. She said she hopes the manager will direct the housing staff to be attentive in the future before we get to this point.

Mr. Barry said he, too, will support the ordinance. He thanked people for coming to testify. He said we've imagined what it's like, but hearing from the public helps us understand. He said he hopes we can be in touch with landlords to have them restore the air conditioning.

Mr. Elrich said we will follow up with those whose air conditioning has been removed. It's good that you came out this evening.

Ms. Daines said this ordinance does not require landlords to reestablish the air conditioning. For landlords who made the decision to remove the air conditioning, this will not impact them necessarily.

Ms. Porter noted that this will take away their incentive.

Ms. Daines said these tenants can attest to the issues. Sometimes air conditioning is in the lease, sometimes not. Sometimes electricity is paid by the landlord, sometimes the tenant pays. If the owner moved the air conditioner, this ordinance would not affect them.

Ms. Austin-Lane said she expects that staff will understand Council's intent.

Ms. Daines said this may not address Council's concerns in the next 90 days.

Mr. Elrich asked Ms. Daines to suggest something that would address Council's concerns. If the air conditioner belongs to the tenant, then the tenant can put it back in.

Mr. Williams said the intent of the Council is that any air conditioning units removed shall be put back in by the property owner. If the tenants own them, they may put them back in. If landlords own the units, they will put them back in.

Ms. Daines said she wants to be sure we're not promising something to these tenants that we can't deliver.

Mr. Seamens noted that some tenants testified that they were threatened with a fine. He noted that he is not sure the property owners have the power to do this.

Mr. Elrich commented that they do it all the time.

Ms. Porter said this should not be an issue anymore.

Ms. Daines said that many of the problems are specific to two buildings.

Mr. Elrich asked, can we threaten to pursue reduction of service charges?

Ms. Daines replied that it depends on the lease. It wouldn't apply to everyone.

Mr. Elrich said that if they had air conditioning before, then this is automatically a reduction in service. The City could file COLTA complaints instead of requiring tenants to do so.

Ms. Daines agreed to research this.

Ms. Silber suggested adding an implementation section to the ordinance. Charge the department with coming up with a mechanism to ensure that the intent of the Council is carried out. It could be proposed legislation, filing COLTA complaints, or talking with landlords.

Mr. Williams agreed, with the understanding that the implementation takes place as soon as possible.

Mr. Elrich suggested inserting a Section 4 to read, "it is the intention of the Council that air conditioning will be restored to the status that existed prior to the action by Montgomery County."

Mr. Williams added, "and tenant owned units may be reinstalled by the tenants immediately and that landlords be directed to replace any units removed, to be effective from July 26 through Oct 26."

Ms. Daines suggested adding that the air conditioning be restored to its status prior to last October when we entered into the contract with Montgomery County.

Mr. Williams said this means that the tenant may, and landlords will. Tenant owned air conditioning may be reinstalled effective immediately, and landlord installed units that were removed are required to be reinstalled as soon as possible. Section 4 should say it is the intention of the Council that air conditioning be restored to the status that existed prior to October 2003.

Amendment moved by Elrich; seconded by Williams. Amendment passed (VOTING FOR: Porter, Austin-Lane, Barry, Elrich, Seamens, Williams; ABSENT: Mizeur).

Ms. Austin-Lane clarified that the City took action last year to transfer inspection responsibilities to the County. The City should not expect individual tenants to come forward with COLTA complaints. The City needs to make this right for tenants.

Ordinance #2004-26 was adopted (VOTING FOR: Porter, Austin-Lane, Barry, Elrich, Seamens, Williams; ABSENT: Mizeur).

Ms. Daines noted that there is still the issue of fuses and using them properly.

Ms. Porter stated that it is not the intention of the Council that this should cause overloads to circuits.

Ordinance 2004-26
(attached)

4. Resolution re: Council Rules and Procedures

Moved by Austin-Lane; seconded by Williams.

Ms. Austin-Lane commented that she appreciates the work Council has done on this. She said she wanted to highlight that there is an opportunity for Council comment and public comment at the beginning of each meeting. In the third paragraph, change to “Public comments will follow Council comments at each meeting.” In the third paragraph, third sentence, change “residents” to “speakers.”

Mr. Williams said he agrees with these editorial changes. The legislative intent is that there will be an opportunity for public comments after Council comments. It does not mean it must immediately follow Council comments.

Ms. Austin-Lane noted Council’s agreement that all changes should be incorporated in the Council “green sheet” on how to participate in a Council meeting, including information on how to submit testimony in writing to the City Clerk’s address.

Mr. Williams and Ms. Austin-Lane both agreed, with Council consensus, to change the word “residents” to “individuals” in paragraph 6, line 6.

Council next addressed the issue of rebuttal time for those who cede time in their testimony.

Mayor Porter asked if those who cede time should get additional time in a second go-round.

Mr. Seamens suggested that the speakers get an additional three minutes, but those who cede time do not get the additional time. Individuals who cede time cede all of their time, including rebuttal time.

Ms. Porter commented that she prefers that the second go-round be kept short and would rather not create the expectation that everyone who speaks gets an additional three minutes. She suggested adding to Section 7, “no individual who has ceded time may speak during a second opportunity to speak on the same issue.”

Mr. Seamens addressed the question of length of time the Library should keep videotapes. He said he would like them kept for five years.

After further discussion, there was Council consensus to drop that because it might create space

issues for the Library.

Motion to adopt the amendments moved by Elrich; seconded by Seamens. Amendments were adopted (AYE: Porter, Austin-Lane, Barry, Elrich, Seamens, Williams; ABSENT: Mizeur).

Resolution 2004-40 was adopted (AYE: Porter, Austin-Lane, Barry, Elrich, Seamens, Williams; ABSENT: Mizeur).

**Resolution 2004-40
(Attached)**

5. Amendment of Agreement with Former City Manager Richard Finn.

Susan Silber explained that this is a narrow amendment to a longer previous agreement from September. Mr. Finn will be assigned work by the new City Manager, who will make a determination as to when the transition period is over. This amendment deals with the confidentiality clause of the previous agreement; both parties have adjusted their expectations. There is a release included, that there will be no claims against Mr. Finn arising from conduct preceding the date of execution of this amendment.

Resolution moved by Austin-Lane; seconded by Elrich.

Ms. Austin-Lane said she would like to delete the sentence that says the City Manager will report her recommendation to Council. Would like to change to "The City Manager will report her decision to the Council."

Mr. Elrich asked for clarification of the last sentence of Section 3, concerning non-disparagement.

Ms. Silber clarified that issues of performance are a protected personnel aspect of the relationship. These are separate from compensation and assignment issues. Performance issues should be raised in closed session.

Mr. Elrich asked, if when speaking with a group, can I say he made a bad decision? I can disagree with his decisions without disparaging him.

Ms. Silber said yes.

Mr. Seamens asked if since we are restricted from discussing performance in public, is the last sentence of Section 3 needed? He said he is hesitant to vote for something that violates First Amendment rights, regardless of their opinion. He said he would not want to limit Mr. Finn's ability to speak. He said he does not see the need for this.

Ms. Silber said that the First Amendment is flexible enough to deal with exceptions. This is not just a Council action, but is an agreement with Mr. Finn. If you take this out, you may not have an agreement.

Mr. Seamens said he can consider this agreement with the statement that limits the Council's ability to make disparaging comments, but that he doesn't want to limit what an ex-employee may say, without a time frame.

Ms. Silber suggested that if Council wants to change it so that only Council will not make disparaging comments, she believes Mr. Finn will agree with that.

Ms. Porter commented that it is important to remember where we are in this process. We have hired a new City Manager. Our previous manager is providing some transition services and other services. This amendment to the agreement is to finalize and clarify some things. I don't have a problem with that sentence. It exists to clarify and make things more out in the open and I would support keeping that in. I don't have any issue with the other change made as to the new City Manager making the decision and reporting it to us.

Ms. Austin-Lane commented that it seems like a gag rule.

Ms. Porter said it is only a gag rule if you intend to make disparaging comments.

Ms. Austin-Lane noted that it does allow us to say we disagreed with decisions made by the former City Manager.

Mr. Elrich said it seems like common decency. I have no problem with that. It's not productive to disparage others. I don't feel like I'm being gagged. You shouldn't feel that way.

Mr. Williams commented that he hopes none of us disparage anyone.

Mr. Williams asked for clarification that January 15 is the final date for Mr. Finn's compensation.

Ms. Silber said that is the correct date.

Ms. Austin-Lane asked Ms. Silber to please clarify public verses private?

Ms. Silber said it means to difference between pubic session and executive session, where those personnel issues might be discussed.

Ms. Austin-Lane asked who are the parties?

Ms. Silber responded that it is the full Council.

Ms. Austin-Lane noted that in Section 3, the last sentence should begin with “The City Council and Rick Finn agree . . .”

Mr. Seamens said he cannot support this agreement with Section 2 (on page 2), concerning the mutual releases.

Mr. Elrich asked what would be the effect of not including Section 2?

Ms. Silber replied that anything that’s not amended stands, so the original agreement would apply.

Ms. Austin-Lane noted that if Section 2 remains in, no claim can be brought forward.

Mr. Elrich said the Council would be prohibited from terminating for behavior between last September and now. If he did something that was actionable, does this mean we cannot pursue it?

Mr. Williams asked if, for example, for a situation as preposterous as an Enron situation, would we be precluded from taking action?

Ms. Silber responded that the Council might be precluded, but a prosecutor would not be.

Mr. Seamens asked if the anti-disparaging clause would keep Council from talking to the prosecutor?

Ms. Silber said it does not tie Councilmembers’ hands from reporting illegal conduct. That is shielded.

Ms. Austin-Lane asked who would act on our behalf if we discovered a criminal act?

Ms. Silber replied that it would be the prosecutor.

Mr. Elrich asked if anything should come to light subsequent to this contract, can we take a personnel action?

Ms. Silber said that the original agreement was to facilitate a peaceful transition. The goal was to have some closure. My advice is to remember that goal. Tie things up. The release provision is probably the most central clause in a severance agreement.

Ms. Porter said leave it as it is. Ms. Silber’s point is a good one. This is to allow us to move smoothly to our new City Manager. She will have the authority to make a determination as to how long the old City Manager remains and what he does.

Mr. Barry agreed. Let’s keep an eye on the big picture.

Ms. Austin-Lane commented if, given the January date and the fact that Mr. Finn will be paid until then, if something is found that is actionable we need to retain some standing in case any information is brought to light.

Ms. Porter said Council should move to a vote. Treat the two changes as amendments:

Amendment 1: Change Section 1B “the City Manager will report her decision to the Council”

Amendment 2: Change Section 3 to: The City Council and Rick Finn

Amendments moved by Elrich; seconded by Williams. Amendments passed (VOTING FOR: Porter, Austin-Lane, Barry, Elrich, Seamens, Williams; ABSENT: Mizeur).

Ms. Austin-Lane said she appreciates Ms. Silber’s advice about how we can retain our standing until January. A release seems important. Can it be specified that from now and January, we can take action if we discover something that happened anytime before?

Ms. Silber said you would vote down Section 2, and then Section 4 of the old agreement remains in effect. You have to remember this is a mutual agreement.

Ms. Porter commented that it would also mean that the City Manager could bring an action as well as the Council

Mr. Elrich asked for clarification on personnel actions.

Ms. Austin-Lane noted that anything that happened prior to tonight is not actionable; anything now forward is actionable.

Catherine Tunis, noted that Council has received several e-mails regarding Section 1(b), concerning the City Manager’s discretion. Also, the last part of Section 3 refers to severance pay. Doesn’t the payment end with the employment? Mr. Finn’s assignments will continue and during this period he will receive full pay and benefits. Finally, I appreciate the clarification of “disparage.” I believe it is important to be able to say what happened.

Ms. Porter clarified that the agreement says Mr. Finn will be paid until January 15. Pay and benefits remain intact. The amendment allows the new City Manager to decide when Mr. Finn’s services end.

Ms. Porter noted for the record that there is no indication that Mr. Finn violated any law. In any case, a criminal action would not be affected by this agreement.

Nellie Moxley, Pinecrest, said she agrees with Catherine Tunis.

Ms. Austin-Lane requested clarification about severance.

Ms. Silber said we haven't changed the section about severance.

There was Council consensus on taking out the word "severance."

Mr. Williams noted that he might disagree with Ms. Tunis' assertion. I would not assume that an opinion is always the truth.

Ms. Silber commented that a question has been raised as to whether under the City Charter the Council can do this. I've researched this and the Council does have this authority. The provision in the Charter that deals with classified and unclassified service does not apply to this situation, where we're dealing with an amendment to an agreement with the former City Manager. Delegating the decision about when to terminate the employment is the Council's prerogative.

Resolution 2004-41 was adopted (VOTING FOR: Porter, Austin-Lane, Barry, Elrich, Williams; NAY: Seamens; ABSENT: Mizeur).

**Resolution 2004-41
(attached)**

6. Resolution re: Council's 2004 Summer Recess

Moved by Williams; seconded by Elrich.

Resolution 2004-42 was adopted unanimously (VOTING FOR: Porter, Austin-Lane, Barry, Elrich, Seamens, Williams; ABSENT: Mizeur).

**RESOLUTION 2004-42
(Attached)**

(Councilmember Elrich departed from the meeting at 10:30 p.m.)

WORKSESSION

7. Update on Carroll Avenue Streetscape Project - Laurel Avenue Section

Ilona Blanchard explained that the project would provide major changes to improve usability, safety, aesthetics. Parallel parking and the median will remain, but there will be major changes to median. It will become more useful for pedestrians. The new bollards will protect pedestrians in the median. The median will extend 25 feet further, but does not extend into the intersection. The parking meters, benches, and trees will be changed. You will still be able to see the clock face with the new tree. The tree will be limbed up. People approaching from any direction will be able to see the clock, except when you pass directly in front of it.

Ms. Austin-Lane asked why this tree by the clock is included in the plan.

Mr. Inerfeld said it is to maximize tree canopy.

Ms. Porter asked if the decision not to move the clock and the rooster statue is based on cost.

Ms. Blanchard explained that the clock would be expensive to move. It is connected to power and there may be structural issues with moving it. The statue is not being moved because it is safer where it is, it would not be safe to put it at the end of the median.

Mr. Inerfeld commented that people using the crosswalk will pass directly by Roscoe.

Ms. Blanchard noted that the community has responded positively to this design.

Mr. Linkletter described the tree plan.

Ms. Porter asked about native species, commenting that native trees do just a little better than others.

Mr. Linkletter replied that he understands the need for native trees, but his concern is also for trees that will survive in the urban environment as well.

Ms. Porter asked about the advisability of using White Oaks in this location because they can grow to such a large size.

Mr. Linkletter said he believes a couple of them would do well. I don't think you could have all White Oaks in this space. The trees probably grow faster and better in your yard than they will here.

Ms. Porter asked how the bollards are removable? How easily can they be moved?

Ms. Blanchard explained that the top of the bollard comes off, so that if there is a desire to put in something else, the bollards can be removed. The bollards at the end provide security.

Mr. Seamens said that the 4th of July Committee has toyed with the idea of changing the parade route by turning after passing Laurel Avenue, into the District. Have you discussed space for floats to pass by?

Ms. Blanchard said the side by the church is 20 feet and will have ample room for floats.

Mr. Seamens referred to Catherine Tunis' e-mail about the use of Willow Oaks.

Mr. Linkletter said that White Oaks are tolerant. Willow Oaks don't have the salt or ph tolerance. These trees are going to be right in the street. Both do reasonably well. Not every

White Oak has a tap root. It developed in certain areas. On the east coast, you don't have the problem with tap roots. We've planted 135 White Oaks in the city.

Ms. Austin-Lane said she hopes the White Oak issue in the median gets resolved. She said she will defer to Mr. Linkletter's judgment.

Ms. Austin-Lane said that some residents who are visually impaired can't circulate in Old Town. How will you address this?

Ms. Blanchard said there will be detectable warnings at all ramps. We won't install the one at Eastern and Laurel.

Mr. Inerfeld noted that we're following ADA directives.

Ms. Blanchard added that signalization changes have been requested to SHA, for audible signals. They have 90 days to respond..

Ms. Austin-Lane raised the issue of the driveway on Laurel, and how to protect children walking across it.

Ms. Blanchard said it will have a sidewalk appearance to make cars realize it is a sidewalk, not a right of way.

Ms. Austin-Lane said there needs to be some demarcation at the driveway, so that pedestrians will recognize that cars cross it. Garbage cans are also needed in the area.

Ms. Blanchard said there is no funding at this point. We will be looking at these for a later date.

Ms. Austin-Lane said that the planters and garbage cans were gifts. She would like residents to have been involved in the decision.

Ms. Blanchard said there will be ample opportunity to add things.

Ms. Austin-Lane said the street lights need to be unified.

John Hyde of the Farmers Market commented that the Farmers Market is very happy with the design. The street level median will improve pedestrian traffic flow. Our main concern was that we not lose space. We would like to expand. This allows at least the same number of stands. The main concern of the farmers is when will it happen and how long will it take?

Ms. Blanchard said the plan is for October construction. We suggest moving the market to Willow. We would prefer not to work in freezing temperatures, and are trying to keep from impacting the Christmas season in Old Town. Construction time will be weather dependant, lasting approximately one month.

Ms. Austin-Lane asked that staff work closely with the neighbors on the temporary location of the market.

Mr. Hyde offered that the Market would be prepared to pay a rental fee to private property owners if need be. We are very appreciative of the ECD staff's work.

Ms. Blanchard briefly discussed the cost estimate. Laurel Avenue is a priority street construction. There is a difference of \$80,000. We were able to use some of EBA's work.

Mr. Inerfeld noted that some of the design costs came through the Carroll Avenue project.

Ms. Austin-Lane commented that staff has done a terrific job working with the community. It is very refreshing.

Ms. Porter said it looks like a nice plan.

There was Council consensus on the plan as presented.

Mr. Inerfeld said that in September we will come back to Council for an approval of the construction contract.

8. Discussion of Street Improvements

Mr. Lott indicated that he spoke with the contractor for our street work (VMP). He will not hold his price if we rebid the work. A rebid would likely result in an increase in paving costs. I was able to piggyback on surveys done by other communities to get prices. We pay \$44/ton, lower than other contractors we surveyed. On the warranty question and inspection of work, the City Engineer signs off. The contractor has submitted a warranty letter. This is unusual for this contractor. We have a long (6-year) relationship with him.

On the Hayward Avenue issue, we discussed the milling process. We've become rather proficient at that sort of paving. We have developed a system where we have a crew available to deal with failure immediately, to avoid the time and expense of having to return later to do a repair.

Ms. Braithwaite said that we do daily inspection. Tonight I've provided costs for completed street resurfacing, 13 streets completed. Tree protection and other smaller items are not included.

Ms. Austin-Lane asked if the guarantee covers the two-inch asphalt topping only?

Ms. Braithwaite replied that they are not warranting subbase or base failure. They are warranting the asphalt, aggregate. The failures on Lincoln and Boyd would not be guaranteed under this. With our City Engineer and the inspector, they will make the call on where these problems are identified.

Mr. Lott noted that the new City Engineer started today. Ms. Braithwaite has done most of the hands-on management of the street project up to this point.

Mr. Seamens complimented both Mr. Lott and Ms. Braithwaite on the progress of the program. Recordkeeping, for example, is much improved. You've done an outstanding job. I look forward to similar progress in stormwater management and look forward to a comprehensive management plan.

Mr. Barry recommend that the City extend the contract with VMP.

Ms. Porter said that Mr. Lott has answered the questions that came up last time. It appears we would likely come up with higher prices if we bid this. I agree that we should move forward to extend.

Council consensus on extending the contract with VMP.

The Council adjourned for the evening at 11:14 p.m.